

Idea for New Unlicensed-Commercial-Sale Background Checks

Background:

- Under existing law, background checks are required for all firearms transfers through Federal Firearm Licensees (FFLs).
- Detailed information about the transfer is captured in Form 4473, which the FFL must maintain for 20 years.
- Many commercial sales are conducted outside of FFLs without any background check or record-keeping requirements.

Description:

- Consistent with the Manchin-Toomey draft legislation, a background-check requirement would be extended to all advertised commercial sales, including sales at gun shows.
- Background checks would be conducted either through an FFL or through a newly-created class of licensed transfer agents.
- Licensed transfer agents would not carry firearm inventory but would be authorized by ATF to initiate background checks for private sales through the National Instant Criminal Background Check System (NICS)—including both (a) verifying the buyer's identity and (b) communicating with NICS.
- A commercial seller, who is not a licensed dealer and does not want an FFL or transfer agent to retain a Form 4473 (identifying the buyer), could go to an FFL or transfer agent to conduct a background check before completing transfer and generate two forms:
 - ***Bill of Sale / Chain of Title.*** This form would record the details of the sale, including the identities of the buyer and seller, and be the seller's responsibility.
 - ***New Form / Certification.*** This form would be a certification from the FFL or transfer agent memorializing a successful background check, including the serial number, date, and confirmation code. (It could also include the seller's identity.)
- Background checks would be conducted based on the same information as Form 4473.
 - If a denial occurs, a referral would be made to law enforcement.
 - If the transaction proceeds, the New Form (certification) would be generated and sent to the seller. The FFL or transfer agent would not retain any identifying information about the buyer. Therefore, the only documentation reflecting the identity of the buyer would be the Bill of Sale in the custody of the seller.
- Sellers could retain these records on their own, but many would be expected to choose voluntarily to have the FFL or transfer agent store the records.
- The record-keeping requirements would be enforced via civil penalties. Also, if a firearm were used in a crime, the seller would enjoy the same civil immunity as FFLs if he could produce the forms from his own records or from those retained by the FFL or transfer agent.